

HR Weekly Podcast  
05-27-2015

Today is May 27, 2015, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic discusses a recent worker's compensation case decided by the South Carolina Court of Appeals.

In Clemmons v. Lowe's Home Centers, Inc.-Harbison, 2015 WL 1453039, Henton T. Clemmons, Jr., worked for Lowe's as a cashier and entered a trailer at the store and slipped on wet straw, landing on his back, neck, and head. Clemmons was originally treated at Doctor's Care and was diagnosed with back strain; radiculopathy, or a disease of the spinal nerve roots; and right knee strain. He was later referred to an orthopedic physician and was diagnosed with acute ataxia, or the inability to coordinate the muscles in the execution of voluntary movement. In his report, that doctor noted unsteady gait and poor balance and his concerns about a brainstem or cerebellar lesion, possible complications from intraventricular shunts implanted when Clemmons was a child to relieve his hydrocephalus, and referred him to a neurosurgeon. The neurosurgeon diagnosed Clemmons with spinal cord depression from a herniated disc and myelopathy, or a disturbance or disease of the spinal cord, and Clemmons underwent a cervical discectomy and fusion. After completing physical therapy, Clemmons had regained normal function in the upper extremities, but mild spasms sometimes affected his gait and balance.

Clemmons filed a Form 50, alleging he sustained an injury to his head, back, and legs as a result of the work-related accident. Lowe's admitted Clemmons sustained a work-related injury to his low back, neck, and right knee and agreed to pay temporary total disability benefits from the date of the accident until his proper termination due to a finding of maximum medical improvement, or MMI; a return to work; or an agreement of the parties. Lowe's denied, however, that Clemmons suffered an injury to his head or left lower extremity and further denied the extent of his injuries. Ultimately, Clemmons reached MMI with the first doctor concluding he had an impairment rating of 25% to the back and two subsequent doctors concluding his loss of function to his back would be over 50%.

A 50% or more loss of use of the back is a rebuttable presumption of total and permanent disability. A single commissioner of the Workers' Compensation Commission found a 48% permanent partial disability to Clemmons's back and that Clemmons was not entitled to permanent total disability because he had returned to work for two years. The Appellate Panel affirmed the single commissioner, finding that the first doctor's medical reports were the most persuasive.

Clemmons appealed. Concluding the Appellate Panel was entitled to place more weight on one doctor's reports, the South Carolina Court of Appeals found that substantial evidence supported the Panel's finding that Clemmons was not entitled to permanent total disability considering the medical evidence as a whole. The Court of Appeals also found that the Appellate Panel had included myelopathy in its permanent partial

disability award to the back and that Clemmons was not entitled to an award for myelopathy as a separate neurological injury. Likewise the Court of Appeals also found Clemmons was not entitled to a separate award for his low back injury, as it too was included in the 48% permanent partial disability to his back.

In this situation the employer successfully handled and resolved a worker's compensation case. It referred its employee to appropriate physicians. It accepted the work-related injuries, but contested the injuries that medical evidence reflected were not related to the accident. Then it requested a determination of its liabilities under the workers compensation law based on the physicians' reports and presented its case. Thank you.